THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.18926 of 2005

Date:14.11.2005

Sri D.Sanyasi Rao.

--------PETITIONER

Secretary, Public Enterprises, (Implementation Secretariat)

B.Block, III Floor, A.P., Secretariat, Hyderabad and another.

---------RESPONDENTS

ORDER:

The petitioner joined as a Clerk on 29.04.1963 in Amadalavalasa Cooperative Sugars Limited-2nd respondent herein, a Society registered under the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'). He was promoted to several other posts. As on 23.04.2004, he held the post of 'Store Keeper' and with effect from that date, he availed the benefit under Voluntary Retirement Scheme. He was paid a sum of Rs.1,91,459/- on the basis that his age of superannuation would be 58 years. The petitioner contends that according to the bye-laws of the 2nd respondent-Society, he was entitled to be continued in service up to the age of 60 years and on that basis, he ought to have been paid a sum of Rs.2,15,357/-. This Writ Petition is filed seeking the relevant benefit.

In the counter affidavit filed on behalf of the respondents, it is stated that the age of superannuation for the post held by the petitioner is 58 years as per Rule 28(5) of the Andhra Pradesh Cooperative Rules, 1964 (for short 'the Rules') and in that view of the matter, no relief can be granted to him.

The learned counsel for the petitioner placed reliance upon several orders

passed by the 2nd respondent, whereunder the employees similarly situated as the petitioner were extended the benefit of age of superannuation of 60 years. He submits that the action of the respondents in treating the age of superannuation of the petitioner as 58 years is discriminatory.

The learned counsel appearing for the respondents placed reliance upon Rule 28(5) of the Rules as well as the Judgment rendered by the Full Bench of this Court in ***Etikoppakka Co-operativeAgricultural and Industrial Society Limited vs. K.Sanyasi***.

The narrow controversy in this Writ Petition is as to whether the age of superannuation for the post of 'Store Keeper' in the 2nd respondent-Society is 58 years or 60 years. It is true that according to the bye-laws of the Society, the age of superannuation for such posts was stipulated as 60 years. In fact, several employees of the Society have been extended that benefit till recently. However, the Government of Andhra Pradesh amended Rule 28 of the Rules through its orders in G.O.Ms.No.37, Agrl. & Coop. (Co-op. IV), dated 28.01.2002. Sub-Rule(5) of Rule 28 of the Rules reads as under:

> "28(5) Notwithstanding anything contained in the Bye-laws/special bye-laws service regulations or common cadre regulations of the co-operative societies every paid servant and officer of the society other than those in the last grade service shall retire from service on the After Noon of the last date of the month on which he attains the age of 58 years."

It is not in dispute that the 2nd respondent is governed by the provisions of the Act and the Rules. By the time the petitioner retired, he held the post of supervisor category and he was not an employee of last grade service. Therefore, the age of superannuation for the post held by the petitioner is 58 years with effect from 28.01.2002. The various orders that were passed by the 2nd respondent, extending the benefit of age of superannuation of 60 years to the employees, who held the posts similar to the one held by the petitioner, were before this amendment.

The validity and applicability of Rule 28(5) of the Rules was considered by the Full Bench of this Court in ***Etikoppakka Co-operativeAgricultural and Industrial Society Limited'***s case. Though the context was different, the Rule was held to be holding the field, that too in relation to the Cooperative Sugar Factories. Therefore, the petitioner cannot claim that the age of superannuation, for the post held by him before his retirement, is 60 years. He has been extended the benefits treating the age of superannuation as 58 years.

In that view of the matter, the Writ Petition is dismissed. There shall be no order as to costs.

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14.11.2005

Jsu